



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

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ATTORNEY GENERAL

September 23, 1974

The Honorable Wilson E. Speir
Director
Texas Department of Public Safety
5805 Lamar Blvd.
Austin, Texas 78773

Opinion No. H- 408

Re: Whether a separated employee is entitled to be retained on the payroll until he has been paid for vacation time accrued during the initial six (6) months of his employment if he is separated from State service before he has been continuously employed for six (6) months.

Dear Colonel Speir:

You have asked whether, under the Appropriation Act for fiscal years 1974-1975, a state employee who terminates or is otherwise separated from state employment before completing six months continuous service should be carried on the state payroll until he has been paid for any vacation time which has accrued.

Section 7 of Article 5 of the current Appropriation Act (Acts 1973, 63rd Leg., ch. 659, at p. 2199) provides in part:

An employee will earn vacation entitlement beginning on the first day of employment with the State and terminating on the last day of duty. Vacation entitlement is accrued at the applicable rate cited above. Credit for one month's accrual will be given for each month or fraction of a month of employment with the State. Vacation with pay may not be granted until the employee has had continuous employment with the State for six (6) months, although credit will be accrued during that period. (emphasis added)

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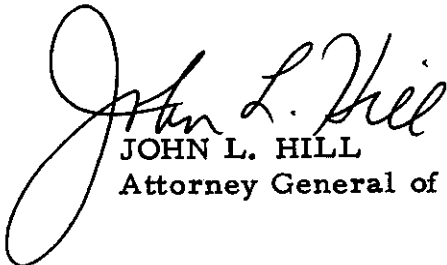
This Office has interpreted similar provisions in past Appropriation Acts to mean that an employee must be employed continuously for six calendar months before he or she is legally entitled to a paid vacation. Attorney General Opinions O-5972 (1944); O-2945 (1941); Letter Response #1667 addressed to Jesse James, State Treasurer, (1949). However, even though a new employee accrues vacation pay, he, like other employees, is not entitled to receive a lump sum payment in lieu of vacation at the time of his separation. Attorney General Opinion H-126 (1973).

We believe the proper interpretation is that most state employees are entitled to be carried on the payroll before they are separated until duly accrued vacation time is exhausted, [Attorney General Opinion H-126 (1973)], but that new employees, although they accrue vacation time, "may not be granted" vacation time with pay until they have had continuous employment with the State for six (6) months.

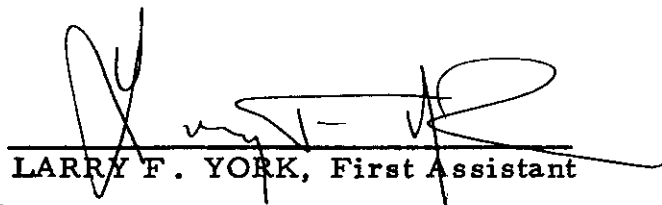
SUMMARY

A state employee who terminates or is otherwise separated from State employment before completing six months continuous service, is not entitled to be paid for accrued vacation time and may not be granted a vacation with pay on the State payroll.

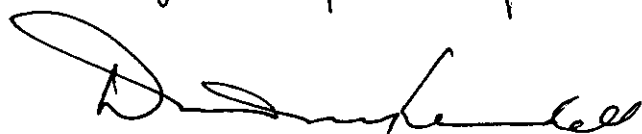
Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:



LARRY F. YORK, First Assistant



DAVID M. KENDALL, Chairman
Opinion Committee

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